

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )  
\_\_\_\_\_

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MB Docket No. 05-311

**COMMENTS OF CITY OF LONGMONT, COLORADO**

These Comments are filed by the City of Longmont in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Longmont believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Longmont is a city with a population of approximately 83,000. Our franchised cable provider is AT&T Broadband of Northern Colorado II, LLC, which was subsequently acquired by Comcast Communications, Inc. (hereafter "Comcast"). Our community has negotiated cable franchises since 1982.

**Our Current Franchise**

Our current non exclusive franchise agreement began on May 25th, 2002 and expires on May 25<sup>th</sup> of 2007. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are currently negotiating a franchise renewal with Comcast.

Our franchise requires the cable operator to pay a franchise fee to the City of Longmont in the amount of 5% of the cable operator's cable tv revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

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List A B C D E

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channels devoted to public access; one channel devoted to educational access; and one channel devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: a PEG fee of up to \$.75 per subscriber per month. The PEG fee is to assist the Longmont Cable Trust in purchasing cameras and other audio visual equipment to support the production of the content on the three channels.

Our franchise contains the following institutional network ("I-Net") requirements: The I-Net is in place in Longmont to provide a transmission path for two-way communications for voice, video and data signals between and among government agencies and educational institutions. We use our I-Net facilities in the following ways: The City currently uses the I-Net to deliver distance learning services to the City's Fire Stations and other City of Longmont locations. It is also used by the Longmont Cable Trust to deliver programming back to the head end for delivery on the public access channel. The I-Net also connects the schools within the St. Vrain Valley School District.

Our franchise contains the following requirements regarding emergency alerts: The cable operator is required to provide the City an operating emergency alert system so that the City may use the cable system to transmit an emergency alert signal, including the ability to override the audio and video on all channels throughout the City from the City's emergency operations center. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise: The City has adopted by ordinance a very comprehensive, twenty five page set of customer service standards. These standards govern the quality and level of service for any cable operator that provides cable service within the City. They include sections on courtesy, accessibility, responsiveness, services for customers with disabilities and senior citizens, handling of customer information, customer privacy, safety, and customer satisfaction.

Our franchise contains the following reasonable build schedule for the cable operator: The cable operator may not arbitrarily refuse to provide cable services to any person within the franchise area. All dwelling units, multiple dwelling units and commercial establishments in the franchise area must have the same availability of cable services from the cable operator's cable system.

Our franchise requires that the cable operator currently provide service to the following areas of our community: In general, the cable operator must provide cable service within seven (7) days of a request by any person within the City. However, for unusual circumstances, such as a customer's request to locate the cable drop underground, the existence of more than one hundred twenty-five (125) feet of distance from distribution cable to connection of service to

customers, or a density of less than forty (40) residences per 5280 cable-bearing strand feet of trunk or distribution cable, services may be made available on the basis of capital contribution in aid of construction, including cost of material, labor and easements. In addition, the cable operator must, at no cost to the City, provide one outlet of only Basic Service to all City owned and occupied buildings, schools and public libraries.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: In the event the cable operator makes any change in the cable system and related equipment and facilities or in its signal delivery technology, which directly or indirectly affects the signal quality or transmission of access services or programming, the cable operator must at its own expense take necessary technical steps or provide necessary technical assistance to ensure that the capabilities of access services are not diminished or adversely affected by such change. In addition, the cable operator was required to upgrade (meaning two way capability throughout the franchise area) within two years of the effective date of the franchise, or by May 25, 2004.

Our franchise contains a level playing field provision which states the following: In the event the City enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the current cable operator, the material provisions of the other agreement must be reasonably comparable to the material provisions of the current franchise as determined by an objective, reasonable person. One operator may not be granted an unfair competitive advantage over another.

Our franchise contains the following insurance and bonding requirements: the cable operator must maintain in full force and effect the following policies of insurance:

1. Commercial General Liability insurance with limits of no less than two million dollars (\$2,000,000) per occurrence and five million dollars (\$5,000,000) general aggregate.
2. Business Automobile Liability insurance with minimum combined single limits of two million dollars (\$2,000,000) each occurrence and three million dollars (\$3,000,000) aggregate with respect to each of the cable operator's owned, hired and non-owned vehicles assigned to or used in the operation of the cable system in the City of Longmont.
3. Employee Liability: one million dollars (\$1,000,000)
4. Workers Compensation Insurance: within the legal limits.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Prior to doing any work in the right of way or other public property, the cable operator must apply for, and obtain, appropriate permits from the City.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: notice, opportunity to cure and opportunity for a hearing on notice. If after following these procedures the City Manager or his/her designee finds that a breach does exist, the City Manager or his/her designee may recommend to City Council that it find the cable operator has breached the franchise. The

City may order the cable operator to correct or remedy the breach within fifteen (15) days or within such other reasonable time frame as the City determines. In the event the cable operator does not cure within such time to the City's reasonable satisfaction, the City may impose one or more of the following sanctions:

1. Withdraw an amount as monetary damages from a letter of credit posted by the cable operator,
2. Recommend the revocation of the franchise pursuant to the procedures set forth therein, if the breach is material.
3. Recommend any other legal or equitable remedy available under the franchise or any applicable law.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: Each and every term, provision and condition in our agreement is subject to the provisions of State law, federal law, the Charter of the City of Longmont, and the ordinances and regulations enacted pursuant thereto.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For example, a franchise must be adopted by ordinance at two public meetings, including a public hearing, all on notice.

### **Competitive Cable Systems**

Our community granted a competitive franchise to Adesta Communications, Inc. ("Adesta"), a cable over builder, in May of 2000. That provider is not providing service in our community today. Adesta built only a very small portion of its cable system when, on November 2, 2001, Adesta filed for protection under Chapter 11 of the U.S. Bankruptcy Code.

### **Conclusions**

The local cable franchising process functions well in the City of Longmont. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

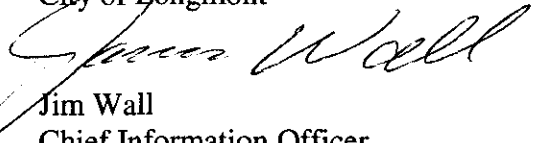
Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Longmont therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Longmont

  
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